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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,214	08/02/2006	Lars Kax	293957US8PCT	6777

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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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ARNETT, NICOLAS ALLEN

ART UNIT	PAPER NUMBER
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3751

NOTIFICATION DATE	DELIVERY MODE
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06/26/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/588,214	<b>Applicant(s)</b> KAX ET AL.	
	<b>Examiner</b> NICOLAS A. ARNETT	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 25-48 is/are pending in the application.
- 4a) Of the above claim(s) 28-36 and 40-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-27 and 37-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/02/2006; 10/04/2006</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of group I, claims 25-27 and 37-39, in the reply filed on October 3, 2008 is acknowledged. The traversal is on the ground(s) that the claims are groups I and II are not lacking unity because the special technical feature is the intermediate feeding chamber. This is not found persuasive because even though the inventions of groups I and II require the technical feature of an intermediate feeding chamber, this technical feature is not a special technical feature as it does not make a contribution over the prior art in view of US Patent 5,875,824 to Atwell et al. (Atwell) and US Patent 6,581,650 to Parks et al. (Parks). Both Atwell and Parks discloses apparatuses for metering powders into receptacles having an intermediate feeding chamber (see the prior art rejections below). The traversal is also on the ground(s) that there would be no serious burden in examining all the claims. This is not found persuasive because there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

- a. the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries); and
- b. the prior art applicable to one invention would not likely be applicable to another invention.

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The requirement is still deemed proper and is therefore made FINAL. Therefore, claims 28-36 and 40-48 remain withdrawn from consideration as drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 25 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,581,650 to Parks et al. (Parks).

Regarding claim 25, Parks discloses an apparatus (10) comprising a feeding chamber device (funnel 58) having at least one inlet (opening of the funnel corresponding to aperture 48) adapted for receiving portions of dry powder from the external bulk powder source (col. 11, lines 13-29) and at least one outlet (outlet at the lower end of the funnel) adapted for dispensing powder to a dose filling tool (col. 11, lines 13-29); an internal volume of the feeding chamber device is configured to hold a limited amount of powder representing a limited number of doses (see Fig. 5), and the feeding chamber device is configured to be replenished intermittently with powder from the external bulk powder source for maintaining a level of powder in the internal volume within specified limits over plural cycles of volumetric dose filling (col. 11, line 13-29); the feeding chamber device and the dose filling tool (chamber 56 on wheel 16) are

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arranged to be movable in relation to each other (see Figs. 5-9) while the at least one outlet of the feeding chamber device is forcibly in contact with a surface of the dose filling tool during the relative movement (Figs. 5 and 9), the relative movement providing shearing and frictional forces on a pillar of powder in the internal volume of the feeding chamber device, thereby assisting in providing a coherent plug of powder within the feeding chamber device (as the wheel rotates the powder is subjected to shearing and frictional forces); and the feeding chamber device constitutes an independent, intermediate device, separating the bulk powder source from the dose filling tool (see Fig. 5).

Regarding claim 37, the method of transporting powder would be accomplished by the normal use of the apparatus of claim 25 as disclosed by Park.

4. Claims 25-27 and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,875,824 to Atwell et al. (Atwell).

Regarding claims 25-27, Atwell discloses an apparatus (abstract) comprising a feeding chamber device (chute 300) having at least one inlet (opening at the top of the chute in the vicinity of valve 112) adapted for receiving portions of dry powder from the external bulk powder source (col. 4, lines 39-42) and at least one outlet (the opening where wheel 200 passes through the chute) adapted for dispensing powder to a dose filling tool (pockets 210 on wheel 200); an internal volume of the feeding chamber device is configured to hold a limited amount of powder representing a limited number of doses (see Fig. 2A), and the feeding chamber device is configured to be replenished

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intermittently with powder from the external bulk powder source for maintaining a level of powder in the internal volume within specified limits over plural cycles of volumetric dose filling (col. 4, line 39-42); the feeding chamber device and the dose filling tool are arranged to be movable in relation to each other (col. 3, line 60 - col. 4, line 18) while the at least one outlet of the feeding chamber device is forcibly in contact with a surface of the dose filling tool during the relative movement (see Figs. 2A and 3A), the relative movement providing shearing and frictional forces on a pillar of powder in the internal volume of the feeding chamber device, thereby assisting in providing a coherent plug of powder within the feeding chamber device (as the wheel rotates the powder is subjected to shearing and frictional forces); and the feeding chamber device constitutes an independent, intermediate device, separating the bulk powder source from the dose filling tool (see Fig. 2A). Atwell further discloses the feeding chamber having an energizable member (baffle 330 energizable by spring 350) and the energizable member comprises at least one scraper member movable relative to the feeding chamber device (see Figs. 2A and 3A showing movement of the baffle 330 which serves as a scraper in the chute). It has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. The baffle is capable of collapsing powder into a plug and separating the plug from contact with the inner surface of the chamber.

Regarding claim 37-39, the method of transporting powder would be accomplished by the normal use of the apparatus of claims 25-27 as disclosed by Atwell.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NICOLAS A. ARNETT whose telephone number is (571)270-5062. The examiner can normally be reached on Monday - Friday 7:30 AM to 3:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NAA

/Len Tran/  
Supervisory Patent Examiner, Art Unit 3752